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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Jean-Paul Scherrer

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EXAMINER

VAN, QUANG T

ART UNIT

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DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/539,411	Applicant(s) SCHERRER ET AL.	
	Examiner Quang T. Van	Art Unit 3742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 37-52 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 37-52 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 June 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

Election/Restrictions

1. Applicant's election with traverse of Group I, species I (Figure 1), claims 37, 41-42 and 45-52 in the reply filed on 9/02/2008 is acknowledged. The traversal is on the ground(s) that the intermediate product of Group I and the flexible heating mat of Group II, as well as the species assigned to the drawing figures, are so intimately related that no undue burden is placed upon the Examiner. This is not found persuasive because the product as claimed in Group I can be made by another and materially different process such as, for example a process does not require the step of cutting out of the metal sheet, that is totally different than the process as claimed in Group II, which is required the step of cutting out of the metal sheet. Further, the applicant is referred to MPEP 809.02 (a), which states the requirements for an election of species requirement. Note especially section (B) which states that "the species are preferably identified as the species of figures 1, 2, and 3" and that the distinguishing characteristics of the species should be states only "in the absence of distinct figures of examples".

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

The requirement is still deemed proper and is therefore made FINAL

Withdrawal of Allowable Subject Matter

2. The indicated allowability of claims 37-38 is withdrawn in view of the newly discovered reference(s) to Mc Farlan et al (US 2,114,396) and De Laney et al (US 2,018,512). The examiner regrets for any inconveniences. Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 46-47, 49-50 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. In claims 46-47 and 49-50, the term “of order of”, recited in line 2, claim 46, and lines 2-3, claim 47, and line 3, claim 49, and claims 2-3, claim 50, is indefinite, because it is unclear what is meant by "of order of". Correction is needed.

NOTE: For purpose of examination, it is presumed “of order of” same meant as “about”.

6. Claim 37 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. In claim 37, the term “the tracks”, recited in line 12, and “the two tracks” recited in line 15, and “the tracks” recited in line 17 is indefinite because there is four tracks: a first track of the first series, a second track of the first series, a first track of the second

series and a second track of the second series, therefore, it is unclear which tracks the applicants try to claim. Clarification is requested.

8. Also, in claim 37, the term "a first track", recited in line 21, is unclear. Is it the same with "a first track" which is recited in line 6? Or is it another first track of other series? and the term "alternation of two second tracks and of two first tracks", recited in line 22, is indefinite because they are unclear whether "two second tracks" of which series? and "two first tracks of which series? Clarification is requested.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 37 and 51-52 are rejected under 35 U.S.C. 102(b) as being anticipated by De Laney et al (US 2,018,512). De Laney discloses an electric heating pad comprising a flexible, electrically insulating sheet (col. 2, lines 2-10) and two series of tracks (28, 29 in figure 6) therein, each series (28, 29) comprising a first and a second track (figure 6) formed by a metal film adapted to be supplied with electric current thereby to be heated, and in which, for each series;

- each track (a, a', b, b', figure below) comprises an upstream end (u') near the upstream end (u) of the intermediate product and a downstream end (d') near the downstream end (d) of the intermediate product;

- the tracks (a, a', b, b') are periodically distributed in the longitudinal direction and extend side by side transversely over virtually the whole width of the intermediate product, and
- the downstream ends of the two tracks (a, a', b, b') are free and adapted to be electrically connected to each other before use,
- the tracks (a, a', b, b') being arranged such that they form successive half-loops which are imbricated in one another so that, in the longitudinal direction, there will be successively encountered, from the upstream end of the intermediate product to the downstream end of the intermediate product, a first track, then an alternation of two second tracks and of two first tracks (figure 6).

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 41, 42 and 45-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Laney et al (US 2,018,512) in view of Doi et al (US 3,584,198). De Laney discloses substantially all features of the claimed invention except two conductive tracks are disposed between two flexible, electrically insulating support sheets. Doi discloses, figures (8A, 8B), two conductive tracks (27) are disposed between two flexible, electrically insulating support sheets (1 and 3). It would have been obvious to one ordinary skill in the art at the time the invention was made to utilize

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in De Laney two conductive tracks are disposed between two flexible, electrically insulating support sheets as taught by Doi in order to electrical insulating between two conductive tracks. With regard to "a width of the intermediate product is about 0.5m " of claim 46, "the width of the tracks is about 2.5cm" and "a thickness of the tracks 0.25mm" of claim 47, "a space between the tracks is equal to substantially half a width" of claim 48, "the spacing of the tracks in the longitudinal direction is about 1.5cm" of claim 49, and "the spacing of the tracks in the transverse direction is about 1cm" of claim 50, it would have been obvious to one ordinary skill in the art at the time the invention was made to make a width of the intermediate product is about 0.5m, the width of the tracks is about 2.5cm, a thickness of the tracks 0.25mm, a space between the tracks is equal to substantially half a width, the spacing of the tracks in the longitudinal direction is about 1.5cm", and "the spacing of the tracks in the transverse direction is about 1cm". Doing so would provide the end product which is suitable to the need of users.

Response to Amendment

13. Applicant's arguments with respect to claims 37, 41-42 and 45-52 have been considered but are moot in view of the new ground(s) of rejection.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang T. Van whose telephone number is 571-272-4789. The examiner can normally be reached on 8:00Am 5:00Pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tu Hoang can be reached on 571-272-4780. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Quang T Van/
Primary Examiner, Art Unit 3742
December 1, 2008

Quang T Van
Primary Examiner
Art Unit 3742